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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 STEVEN DANIEL MILLER,

15 Defendant.
16

CASE NO. 2:23-cr-00250-DJC

PLEA AGREEMENT

DATE: May 2, 2024

TIME: 9:00 AM

COURT: Hon. Daniel J. Calabretta

17
18 I. INTRODUCTION

19 A. Scope of Agreement.

20 The Indictment in this case charges the defendant with violations of 18 U.S.C. § 1344 – Bank
21 Fraud (Count 1) and 18 U.S.C. § 1028A – Aggravated Identity Theft (Count 2). This document contains
22 the complete plea agreement between the United States Attorney’s Office for the Eastern District of
23 California (the “government”) and the defendant regarding this case. This plea agreement is limited to
24 the United States Attorney’s Office for the Eastern District of California and cannot bind any other
25 federal, state, or local prosecuting, administrative, or regulatory authorities.

26 B. Court Not a Party.

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

concerning the criminal activities of defendant, including activities which may not have been charged in the Indictment. The Court is under no obligation to accept any recommendations made by the government, and the Court may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this plea agreement.

If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this plea agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

II. DEFENDANT'S OBLIGATIONS

A. Guilty Plea.

The defendant will plead guilty to 18 U.S.C. § 1344 – Bank Fraud (Count 1) and 18 U.S.C. § 1028A – Aggravated Identity Theft (Count 2). The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit A are accurate.

The defendant agrees that this plea agreement will be filed with the Court and become a part of the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his pleas should the Court not follow the government's sentencing recommendations.

The defendant agrees that the statements made by him in signing this Agreement, including the factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this Agreement generally.

B. Restitution.

The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of certain offenses. Defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims

1 affected by this offense, including, but not limited to, the victims covered in the factual basis and other
2 victims as a result of the defendant's conduct for the offenses charged in the Indictment. The parties
3 agree that restitution will amount to at least \$36,205.81. Restitution payments shall be by cashier's or
4 certified check made payable to the Clerk of the Court.

5 Defendant agrees that all criminal monetary penalties imposed by the court, including restitution,
6 will be due in full immediately at time of sentencing and subject to immediate enforcement by the
7 government. Defendant agrees that any payment schedule or plan set by the court is merely a minimum
8 and does not foreclose the United States from collecting all criminal monetary penalties at any time
9 through all available means.

10 Defendant further agrees that he will not seek to discharge any restitution obligation or any part
11 of such obligation in any bankruptcy proceeding.

12 Defendant shall not sell, encumber, transfer, convey, or otherwise dispose of any of his assets
13 without prior written consent of the United States Attorney, except that the defendant may sell, transfer
14 or convey personal property (including used vehicles and personal items, but not financial instruments,
15 ownership interests in business entities or real property) with an aggregate value of less than \$5,000.

16 **C. Fine.**

17 The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a
18 fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively
19 prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury
20 to the Probation Officer and the government in advance of the issuance of the draft Presentence
21 Investigation Report, along with supporting documentation. The government retains the right to oppose
22 the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered
23 by the Court, up to the statutory maximum fine for the defendant's offenses.

24 **D. Special Assessment.**

25 The defendant agrees to pay a special assessment of \$200 at the time of sentencing by delivering
26 a check or money order payable to the United States District Court to the United States Probation Office
27 immediately before the sentencing hearing. The defendant understands that this plea agreement is
28 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the

1 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
2 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

3 **E. Violation of Plea Agreement by Defendant/Withdrawal of Pleas.**

4 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
5 his plea, this plea agreement is voidable at the option of the government. If the government elects to
6 void the agreement based on the defendant's violation, the government will no longer be bound by its
7 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
8 forth herein. A defendant violates the plea agreement by committing any crime or providing or
9 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
10 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
11 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
12 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
13 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
14 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
15 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
16 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
17 any federal criminal violation of which the government has knowledge. The decision to pursue any or
18 all of these options is solely in the discretion of the United States Attorney's Office.

19 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
20 defenses that the defendant might have to the government's decision. Any prosecutions that are not
21 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
22 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
23 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
24 The defendant agrees not to raise any objections based on the passage of time with respect to such
25 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
26 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
27 of the date of this plea agreement. The determination of whether the defendant has violated the plea
28 agreement will be under a probable cause standard.

1 In addition, (1) all statements made by the defendant to the government or other designated law
 2 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
 3 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
 4 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
 5 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
 6 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
 7 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
 8 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

9 **F. Asset Disclosure.**

10 The defendant agrees to make a full and complete disclosure of his assets and financial
 11 condition, and will complete the United States Attorney's Office's "Authorization to Release
 12 Information" and "Financial Disclosure Statement" within three (3) weeks from the entry of the
 13 defendant's change of plea, including supporting documentation. The defendant also agrees to have the
 14 Court enter an order to that effect. The defendant understands that if he fails to complete truthfully and
 15 provide the described documentation to the United States Attorney's Office within the allotted time, he
 16 will be considered in violation of the agreement, and the government shall be entitled to the remedies set
 17 forth in section II.E above.

18 Defendant expressly authorizes the United States to immediately obtain a credit report to
 19 evaluate defendant's ability to satisfy any monetary penalty imposed by the court. Defendant also
 20 authorizes the U.S. Attorney's Office to inspect and copy all financial documents and information held
 21 by the U.S. Probation Office.

22 **III. THE GOVERNMENT'S OBLIGATIONS**

23 **A. Dismissals/Other Charges.**

24 The government agrees not to bring any other charges arising from the conduct outlined in the
 25 Factual Basis attached hereto as Exhibit A. The government also agrees not to reinstate any dismissed
 26 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
 27 of Plea Agreement by Defendant/Withdrawal of Pleas), VI.B (Stipulated Guideline Calculation), and
 28 VII.B (Waiver of Appeal and Collateral Attack) herein.

B. Recommendations.

1. Incarceration Range.

The government will recommend that the defendant be sentenced to the low-end of the applicable guideline range as determined by the Court for the 18 U.S.C. § 1344 offense, plus the 2-year mandatory sentence under 18 U.S.C. § 1028A. The government will recommend under U.S.S.G. § 5G1.3(d) that the sentence imposed in this case be imposed to run concurrently with the sentence already imposed by the Superior Court of the State of California, Placer County, in case 62-169890A, in order to achieve a reasonable punishment for the instant offense.

2. Acceptance of Responsibility.

The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G. § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

C. Use of Information for Sentencing.

The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

IV. ELEMENTS OF THE OFFENSE

At a trial, the government would have to prove beyond a reasonable doubt the following elements of the offense to which the defendant is pleading guilty, Count 1, a violation of 18 U.S.C. § 1344 – Bank Fraud:

First, on or about October 6, 2018, the defendant knowingly carried out a scheme or plan to obtain money or property from a financial institution by making false statements or promises;

1 Second, the defendant knew the statements or promises were false;

2 Third, the statements or promises were material; that is, they had a natural tendency to
3 influence, or were capable of influencing, a financial institution to part with money or property;

4 Fourth, the defendant acted with the intent to defraud; and

5 Fifth, the financial institution was federally insured.

6 At a trial, the government would have to prove beyond a reasonable doubt the following
7 elements of the offense to which the defendant is pleading guilty, Count Two, a violation of 18 U.S.C. §
8 1028A – Aggravated Identity Theft:

9 First, the defendant knowingly transferred, possessed, or used without legal authority a
10 means of identification of another person;

11 Second, the defendant knew that the means of identification belonged to a real person;
12 and

13 Third, the defendant did so during and in relation to a violation of 18 U.S.C. § 1344 –
14 Bank Fraud.

15 The defendant fully understands the nature and elements of the crimes charged in the Indictment
16 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
17 his attorney.

18 **V. MAXIMUM SENTENCE**

19 **A. Maximum Penalty.**

20 The maximum sentence that the Court can impose for a violation of 18 U.S.C. § 1344 (Bank
21 Fraud) is 30 years of incarceration, a fine of \$1,000,000, a 5-year period of supervised release, and a
22 special assessment of \$100. For a violation of 18 U.S.C. § 1028A (Aggravated Identity Theft), the
23 Court must impose a mandatory sentence of 2 years of incarceration consecutive to any term of
24 incarceration imposed under any other count of the Indictment, and the violation further includes a
25 maximum \$250,000 fine, a maximum 1-year period of supervised release, and a \$100 special
26 assessment. By signing this plea agreement, the defendant also agrees that the Court can order the
27 payment of restitution for the full loss caused by the defendant's wrongful conduct. The defendant
28 agrees that the restitution order is not restricted to the amounts alleged in the specific counts to which he

1 is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in
2 any present or future bankruptcy proceeding any restitution imposed by the Court.

3 **B. Violations of Supervised Release.**

4 The defendant understands that if he violates a condition of supervised release at any time during
5 the term of supervised release, the Court may revoke the term of supervised release and require the
6 defendant to serve up to three additional years of imprisonment.

7 **VI. SENTENCING DETERMINATION**

8 **A. Statutory Authority.**

9 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
10 must take them into account when determining a final sentence. The defendant understands that the
11 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
12 Sentencing Guidelines and must take them into account when determining a final sentence. The
13 defendant further understands that the Court will consider whether there is a basis for departure from the
14 guideline sentencing range (either above or below the guideline sentencing range) because there exists
15 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
16 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
17 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
18 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

19 **B. Stipulated Guideline Calculation.**

20 The government and the defendant agree that there is no material dispute as to the following
21 sentencing guidelines variables and therefore stipulate to the following:

- 22 1. Base Offense Level: 7 (USSG § 2B1.1(a)(1))
- 23 2. Intended Loss Amount: +6 for loss over \$40,000 (USSG § 2B1.1(b)(1)(D))
- 24 3. Acceptance of Responsibility: See paragraph III.B.2 above
- 25 4. Criminal History: The parties estimate, but do not stipulate, that the defendant's
26 criminal history category will be IV.
- 27 5. Sentencing Range: 18-24 months + mandatory 24 months consecutive pursuant to
28 U.S.S.G. § 2B1.6 (The defendant understands that if the criminal history category differs
from the parties' estimate, his Guidelines sentencing range may differ from that set forth
here.)

1 The parties agree that they will not seek or argue in support of any other specific offense
 2 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),
 3 or cross-references, except that the government may move for a departure or an adjustment based on the
 4 defendant's post-plea obstruction of justice (§3C1.1). Both parties agree not to move for, or argue in
 5 support of, any departure from the Sentencing Guidelines.

6 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
 7 under 18 U.S.C. § 3553(a), except he cannot argue for a sentence below the 2-year mandatory
 8 consecutive sentence under 18 U.S.C. § 1028A. The government will recommend that the defendant be
 9 sentenced to the low-end of the applicable guideline range as determined by the Court for the 18 U.S.C.
 10 § 1344 offense, plus the 2-year mandatory sentence under 18 U.S.C. § 1028A.

11 VII. WAIVERS

12 A. Waiver of Constitutional Rights.

13 The defendant understands that by pleading guilty he is waiving the following constitutional
 14 rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to
 15 be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative
 16 defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of
 17 conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to
 18 testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be
 19 compelled to incriminate himself.

20 B. Waiver of Appeal and Collateral Attack.

21 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
 22 conviction, and sentence. The defendant agrees as part of his pleas, however, to give up the right to
 23 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
 24 exceed the statutory maximums for the offenses to which he is pleading guilty. The defendant
 25 understands that this waiver includes, but is not limited to, any and all constitutional and/or legal
 26 challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which
 27 defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts
 28 attached to this agreement is insufficient to support the defendant's plea of guilty. The defendant

1 specifically gives up the right to appeal any order of restitution the Court may impose.

2 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
3 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
4 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
5 understands that these circumstances occur infrequently and that in almost all cases this Agreement
6 constitutes a complete waiver of all appellate rights.

7 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
8 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
9 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

10 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
11 attempts to vacate his pleas, dismiss the underlying charges, or modify or set aside his sentence on any
12 of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
13 herein.

14 **C. Waiver of Attorneys' Fees and Costs.**

15 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
16 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
17 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
18 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
19 charges previously dismissed).

20 **D. Impact of Plea on Defendant's Immigration Status.**

21 Defendant recognizes that pleading guilty may have consequences with respect to his
22 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
23 are removable offenses, including at least one offense to which the defendant is pleading guilty. The
24 defendant and his counsel have discussed the fact that at least one of the charges to which the defendant
25 is pleading guilty is an aggravated felony, or a crime that is likely to be determined to be an aggravated
26 felony under 8 U.S.C. § 1101(a)(43), and that while there may be arguments that defendant can raise in
27 immigration proceedings to avoid or delay removal, it is virtually certain that defendant will be
28 removed. Removal and other immigration consequences are the subject of a separate proceeding,

however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequence is his automatic removal from the United States.

VIII. ENTIRE PLEA AGREEMENT

Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated: 5/2/24



RANDY SUE POLLOCK
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 5/2/24



STEVEN DANIEL MILLER
Defendant

1 **C. Attorney for United States:**

2 I accept and agree to this plea agreement on behalf of the government.

3 Dated: **5/2/2024**

PHILLIP A. TALBERT
United States Attorney

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5 
6 DENISE N. YASINOW
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea(s)

On or about October 6, 2018, defendant Steven Daniel Miller, in the County of Sutter, State and Eastern District of California, did knowingly and with the intent to defraud execute and attempt to execute a material scheme and artifice to defraud a financial institution and to obtain monies, funds, credits, assets, securities, and other property owned by and under the control of such financial institution, to wit, Ally Bank, by means of materially false and fraudulent pretenses and representations. At all relevant times, Ally Bank was federally insured by the Federal Deposit Insurance Corporation.

In particular, Miller obtained the personal identifying information (PII), including the name and social security number, of Person 1. Using Person 1's PII, Miller completed and submitted a credit application with Ally Bank in order to effectuate the purchase a 2018 Dodge Challenger Hellcat at a car dealership in Yuba City, California. Based on the false information on the credit application, Ally Bank approved the loan and paid \$75,754.00 to the car dealership. Miller left the dealership with the vehicle.

Although the vehicle was eventually seized from Miller's residence by law enforcement, Ally Bank still incurred at least \$36,205.81 in losses, which include fees paid to recover and store the vehicle as well as a deficiency balance following the sale of the vehicle at auction.

Miller's conduct also involved aggravated identity theft, in which Miller knowingly possessed and used without legal authority a means of identification of a real person in relation to bank fraud. Here, or about October 6, 2018, Miller possessed and used the social security number of Person 1 in order to complete the credit application and defraud Ally Bank.

I have reviewed the entire factual basis in Exhibit A above and, as far as my own conduct and personal knowledge is concerned, I adopt it as my own true statement.

DATED: 5/2/24



STEVEN DANIEL MILLER
Defendant